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**NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION**

DATE OF DECISION: August 25, 2003  
HEARING EXAMINER: Rebecca A. Bryant  
RE: Zoning Appeal Case No. 5362  
APPLICANTS: James & Carrie Hainley  
LOCATION: 1421 Fountain Glen Drive, Bel Air  
REQUEST: Variance to construct an addition and disturb the  
Natural Resource District buffer

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final **SEPTEMBER 23, 2003**, unless a written request for final argument before the County Council/Board of Appeals is filed by the close of business on that date by the Applicant, Applicant's Attorney, Opponents, People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Council Administrator, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

Barbara J. Ruth  
Council Administrator

Enclosure

cc: Applicant/Attorney; Opponents/Attorney; Adjoining Property Owners; People's Counsel;  
Registered Hearing Attendees; Department of Planning and Zoning; Department of Law

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BOARD OF APPEALS CASE NO. 5362

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BEFORE THE

APPLICANT: James & Carrie Hainley

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ZONING HEARING EXAMINER

REQUEST: Variance to construct an addition  
and disturb the Natural Resource District  
buffer; 1421 Fountain Glen Drive, Bel Air

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OF HARFORD COUNTY

Hearing Advertised

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Aegis: 6/11/03 & 6/18/03

HEARING DATE: July 23, 2003

\*

Record: 6/13/03 & 6/20/03

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### ZONING HEARING EXAMINER'S DECISION

The Applicants, James R. Hainley and Carrie Hainley, are requesting a variance, pursuant to Sections 267-41K(5)(e) & (6) of the Harford County Code, to disturb the Natural Resource District buffer in an R2/COS District.

The subject parcel is located at 1421 Fountain Glen Drive, Bel Air, Maryland 21015, in the Third Election District, and is more particularly identified on Tax Map 49, Grid 2E, Parcel 317, Lot 273. The parcel contains approximately 0.182 acres more or less.

The Applicant, James R. Hainley, appeared and testified that he and the Co-Applicant, Carrie Hainley, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein.

The witness described his property as a 0.18 acre lot, which is unique, because fifty percent of the property is covered by Natural Resource District (NRD) zoning. He described the improvements currently located on the property as a two-story dwelling with an attached two-car garage, and an attached rear deck. The witness indicates that he is proposing to remove the existing rear deck, and replace it with a three-story addition, to be constructed behind the existing garage. The proposed addition would encroach four feet into the NRD, which transverses the rear of his property from east to west along a curved line. Only 30 square feet of the addition would extend behind the setback line into the NRD buffer.

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The witness also testified that he proposes to move the existing deck from its present location on the western portion of the property, to an area behind the home on the eastern portion of the property. The relocated deck would overhang one corner of the NRD by six to eight feet. However, construction would be done in a manner similar to that of the existing deck, in that it would be attached to the home by four foot cantilevers, rather than set on posts. Therefore, the deck itself will not actually touch the NRD portion of the property.

The witness testified that construction of the proposed addition will not require the removal of any trees. Nevertheless, he and the Co-Applicant propose to submit a landscaping plan, which will provide for additional landscaping and planting of trees around the proposed addition. Mr. Hainley further testified that he intends to plant appropriate landscaping to mitigate any potential disturbance to the NRD.

According to the Applicant, the proposed addition and deck will be compatible with both the existing dwelling, and with other properties in the neighborhood. He also stated that the granting of the requested variance will have no adverse impact on adjacent properties, because there are many similar additions and decks located within the Fountain Glen neighborhood. Mr. Hainley testified that the builder was supposed to build a family room behind the garage during initial construction, but failed to do so, despite the fact that all similar homes in the neighborhood have ground floor family rooms. He also indicated that the addition will actually improve neighboring property values because his home will then conform to other houses, with identical floor plans, built by the same contractor in the same neighborhood. Mr. Hainley stated that he had spoken with all adjoining property owners, and that none of them are opposed to the application or the proposed improvements. Finally, he testified that he had received approval from his homeowner's association to construct the proposed addition, and to relocate the deck.

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Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the findings of fact, and the recommendations made by that agency. Mr. McClune stated that the Department recommended approval of the subject request in its June 27, 2003 Staff Report, subject to the conditions set forth in that Report. He described the property as unique, due to the fact that a significant portion of the lot is located within the NRD. He also indicated that the proposed addition and deck will meet all setback requirements, but will encroach into the NRD because of the unique location of the property. The witness clarified that the area of the property on which the addition will be constructed is actually mowed lawn, despite the fact that it is located within the NRD. He indicated that the purpose of the NRD in the subject area is to provide improved water quality, and that the landscaping proposed by the Applicants will not only serve as mitigation, but will actually improve water quality in that area.

Mr. McClune further stated that the granting of the requested variance would have no adverse impact on any neighboring properties, because the Applicants' home is one of the smaller models in the area, and the addition would make the property more compatible with other homes in the community. Mr. McClune next testified that neither the Maryland Department of the Environment nor the Town of Bel Air had any comments with regard to the proposed application. In response to questions asked by the Hearing Examiner, Mr. McClune clarified that the former Maryland Department of Natural Resources is now known as the Maryland Department of the Environment. He stated that the Department of Planning and Zoning had contacted that department seeking comments regarding the proposed application, and had received an e-mail indicating that it had no comment. He also indicated that a similar request was submitted to the former Soil Conservation Service, now known as the Soil Conservation District, and that department, likewise, had no comment regarding the application. Finally, Mr. McClune indicated that, because the property is within one mile of the Bel Air town limits, the Department of Planning and Zoning had solicited comments from the Town of Bel Air regarding the application, but had received no response.

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### **CONCLUSION**

The Applicants, James R. Hainley and Carrie Hainley, are requesting a variance, pursuant to Sections 267-41K(5)(e) & (6) of the Harford County Code, to disturb the Natural Resource District buffer in an R2/COS District.

Section 267-41D(5)(e) reads as follows:

- (5) Conservation requirements. The following conservation measures are required within this district:
  - (e) Nontidal wetland shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

Section 267-41D(6) of the Harford County Code states as follows:

- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service, and the Department of Natural Resources.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The standard for granting variances in cases involving the Natural Resource District (NRD) is substantially similar to other variance requests. The primary difference is that the Code requires consideration of several additional factors designed to determine whether the requested variance will result in harm to sensitive environmental elements located within the NRD itself. In the subject case, the Board must make an affirmative finding that the “proposed development will not adversely affect the Natural Resources District.”

The Hearing Examiner finds that the proposed development will not cause any adverse impact to the NRD. Although technically located within the NRD, the proposed addition will actually be constructed over an area of mowed lawn, which is now cared for by the Applicants. The proposed addition would encroach only four feet into the NRD, and only 30 square feet of the addition would extend into the NRD buffer area. The deck would overhang the NRD by six to eight feet, however, because it will be attached directly to the home, as opposed to being located on posts, the deck itself will not actually touch the NRD property. The Hearing Examiner accepts the Department of Planning and Zoning's testimony that the purpose of the NRD the subject area is to provide improved water quality, and that the landscaping proposed by the Applicants will not only serve as mitigation, but will actually improve water quality in the area.

The zoning ordinance also requires that advisory comments be requested from the Zoning Administrator, the Soil Conservation Service, and the Department of Natural Resources prior to the granting of variances within the NRD. Comments from the Zoning Administrator were provided by Mr. McClune who testified that the proposed construction will have no adverse impact on the NRD. The Hearing Examiner accepts this testimony, as well as Mr. McClune's testimony that the Department solicited comments from both the Maryland Department of the Environment (f/k/a Maryland Department of Natural Resources) and the Soil Conservation District (f/k/a Soil Conservation Service), neither of which had any comments regarding the subject application. The Hearing Examiner also accepts Mr. McClune's testimony that the town of Bel Air had no response to the Department's request for comments regarding the subject application.

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Following consideration of the special factors regarding potential harm to the NRD itself, the Hearing Examiner must next determine whether the standards set forth in Harford County Code Section 267-11 have been met by the Applicants. The Maryland Court of Special Appeals set forth a two prong test for determining the granting of variances in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the property in question is unique, the Hearing Examiner may proceed to the second prong of the test, which involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique, because over 50% of its area is encompassed by NRD zoning. Thus, the first prong of the Cromwell test has been met. The Hearing Examiner also finds that literal enforcement of the Code in this case would result in both practical difficulty and unreasonable hardship for the Applicants. If the requested variance is not granted, the Applicants will be unable to construct a first floor family room similar to those found on matching homes within their community. The Applicants would therefore be denied property rights commonly enjoyed by others living within their neighborhood.

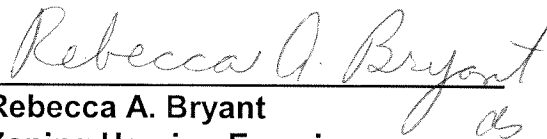
The Hearing Examiner further finds that the granting of the requested variance will not adversely impact, or be substantially detrimental to any adjacent properties. The proposed addition and deck will be compatible with both the existing dwelling, and with other properties in the neighborhood. There is undisputed evidence that these improvements may actually improve property values within the neighborhood, because the Applicant's home will then match other homes with the same floor plan, built by the same contractor within the community.

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The Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. The Applicant obtains all necessary permits and inspections for the construction of the addition and decking.
2. The Applicant shall plant at least two (2) trees plus landscaping around the new addition and decking. A detailed landscaping plan, including the types of vegetation to be planted, shall be submitted to the Department for approval prior to submittal of the building permit application for the deck and addition.
3. All proper sediment control practices shall be utilized during construction to protect against erosion.

Date AUGUST 25, 2003

  
Rebecca A. Bryant  
Zoning Hearing Examiner